

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIFFANY HSUEH,

Plaintiff,

No. 15-cv-03401 (PAC)

-against-

THE NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES a/k/a THE DEPARTMENT
OF FINANCIAL SERVICES and ABRAHAM
GUEVARA, *Individually*,

Defendants.

DECLARATION OF EVA L. DIETZ

EVA L. DIETZ hereby declares as follows:

1. I am an Assistant Attorney General in the Office of New York State Attorney General Eric T. Schneiderman, counsel for defendant New York State Department of Financial Services (“DFS”) in this action, and am admitted to practice before this Court. I make this declaration in support of DFS’s motion for spoliation sanctions against plaintiff Tiffany Hsueh.
2. Attached hereto as Exhibit A is a true and correct copy of a letter from DFS to defendant Abraham Guevara, dated August 15,¹ which was produced in this matter by Guevara.
3. Attached hereto as Exhibit B is a true and correct copy of a letter to DFS from plaintiff’s attorney, Joshua Frank, Esq., dated February 2, 2015, which was produced in this matter by DFS.
4. Attached hereto as Exhibit C is a true and correct copy of an excerpt from the

^{1 1} The letter is incorrectly dated 2015 rather than 2014. It is undisputed that Guevara retired from DFS in September 2014, shortly after plaintiff filed an internal complaint against him in August 2014. See Complaint ¶¶ 34-35. Accordingly, the letter could not have been sent in 2015. Indeed, by August 15, 2015, this lawsuit had already been filed, both defendants had answered, and the parties were preparing for mediation. See Docket Nos. 1, 9-11.

transcript of plaintiff's deposition, taken by defendants in this matter on April 20-21, 2016, which describes the spoliation at issue in this motion.

5. Attached hereto as Exhibit D are true and correct copies of additional excerpts from the transcript of plaintiff's deposition.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed by me in New York, New York on this 13th day of July 2016.

A handwritten signature in black ink, appearing to be 'Eva L. Dietz', is written over a horizontal line.

Eva L. Dietz

Exhibit A



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

August 15, 2015

HAND DELIVERY

Mr. Abraham B. Guevara
30 47 12th Street
Long Island City, NY 11102

Dear Mr. Guevara:

This is to inform you that the Department of Financial Services is placing you on administrative leave effective immediately pending the results of an investigation into alleged misconduct on your part.

Please be advised that you are directed not to report to work until further notice from the Office of Human Resources Management. In addition, while on administrative leave you are directed to refrain from visiting the premises of the Department of Financial Services located at One State Street, New York, NY.

Should you have any questions concerning this matter, they may be directed to Scott Gollop, the Director of Labor Relations or me at (212) 709-5448.

Sincerely,

A handwritten signature in black ink that reads "Marie Allen Campbell".

Marie Allen Campbell
Director, Human Resources Management

Cc: Cheryl Aini
Scott Gollop

Exhibit B

PHILLIPS & ASSOCIATES

ATTORNEYS AT LAW

45 BROADWAY SUITE 620, NEW YORK, NY 10006

TEL: 212-248-7431 FAX: 212-901-2107

WWW.NYCEMPLOYMENTATTORNEY.COM

A PROFESSIONAL LIMITED LIABILITY COMPANY

February 2, 2015

Personal & Confidential

Benjamin M. Lawsky
Superintendent of Financial Services
New York State Department of Financial Services
One State Street
New York, NY 10004

RE: Tiffany Hsueh v. The New York State Department of Financial Services, et. al.

Dear Mr. Lawsky:

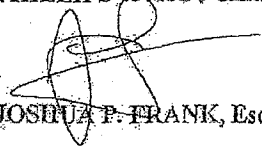
Please be advised that this office represents Tiffany Hsueh regarding claims of sexual harassment and gender discrimination against The New York State Department of Financial Services and Abraham Guevara. The enclosed Complaint sets forth a detailed recitation of the facts alleged.

This letter is being sent preliminarily to a lawsuit in a good faith attempt to resolve this matter.
Please be advised that it is extremely important that all documents and surveillance footage maintained by the Department relating to this matter be immediately protected from destruction and preserved. Those documents and footage could be evidence relevant to this dispute and failure to preserve evidence can result in significant sanctions. The obligation to preserve documents and surveillance footage extends to each employee of the Department and to all documents and video footage relating to this matter, regardless of their form or format (i.e., paper documents, word processing or spreadsheet files, e-mails, physical apparatuses [phones, etc.] and any similar computer files or data.) Those documents and surveillance footage must be preserved from this point forward. If insiders or affiliates of the Department have documents or video footage related to this matter, this litigation hold should also extend to such entities.

Kindly contact me or have your legal representative contact me by 12:00 p.m. on February 17, 2015 to discuss this matter. If I do not hear from you or your counsel by then, I shall assume the Department has no interest in discussing an amicable resolution, and we shall immediately thereafter commence the litigation process by filing a Charge of Discrimination with the EEOC. Thank you for your cooperation in this regard.

Sincerely yours,

PHILLIPS & ASSOCIATES


JOSHUA P. FRANK, Esq.

Enclosure

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Case No.
TIFFANY HSUEH,

Plaintiff,

COMPLAINT

-against-

PLAINTIFF DEMANDS
A TRIAL BY JURY

THE NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES a/k/a THE DEPARTMENT
OF FINANCIAL SERVICES and ABRAHAM
GUEVARA, *Individually*,

Defendants.
-----X

Plaintiff, TIFFANY HSUEH, by her attorneys, PHILLIPS & ASSOCIATES, Attorneys at
Law, PLLC, hereby complains of the Defendants as follows:

NATURE OF THE CASE

1. Plaintiff complains pursuant to Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166 ("Title VII")), and the New York City Human Rights Law, New York City Administrative Code § 8-502(a), *et. seq.*, and seeks damages to redress the injuries she has suffered as a result of being sexually harassed and discriminated against on the basis of gender by her employer.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is proper under 42 U.S.C. §2000e-5(f)(3), and 28 U.S.C. §§1331 and 1343.
3. The Court has supplemental jurisdiction over the claims of Plaintiff brought under the New York City Human Rights Law pursuant to 28 U.S.C. §1367.

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) as the occurrences giving rise to this action took place within the Southern District of New York.

PROCEDURAL PREREQUISITES

5. Plaintiff filed charges of discrimination upon which this Complaint is based with the Equal Employment Opportunity Commission ("EEOC").
6. Plaintiff received a Notice of Right to Sue from the EEOC, dated _____, with respect to the herein charges of discrimination. A copy of the Notice is annexed hereto.
7. This Action is being commenced within ninety (90) days of receipt of said Right to Sue.

PARTIES

8. Plaintiff TIFFANY HSUEH ("HSUEH") is a resident of the State of New York and Kings County.
9. Defendant THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES a/k/a THE DEPARTMENT OF FINANCIAL SERVICES ("DFS") is a state governmental department, duly existing pursuant to, and by virtue of, the laws of the State of New York, with a main office located at One State Street, New York, New York 10004.
10. DFS is responsible for regulating financial services and products, including those subject to New York State laws.
11. Plaintiff is a Grade 18 employee of Defendant DFS at the main office.
12. At all times relevant hereto, Defendant ABRAHAM GUEVARA ("GUEVARA") was a Grade 31 employee of DFS, holding the position of Supervisory Examiner.
13. At all times relevant hereto, Defendant GUEVARA held a senior supervisory position at DFS.
14. Defendants DFS and GUEVARA are referred to herein collectively as the "Defendants."

MATERIAL FACTS

15. Defendant DFS hired Plaintiff HSUEH as an Insurance Examiner, and she began her employment in October, 2010, earning a yearly salary of approximately \$40,000.
16. Beginning in July, 2012, Defendant GUEVARA would consistently walk by Plaintiff's cubicle and make conversation. Soon thereafter, he began inviting her to lunch on occasion. Plaintiff did not suspect anything untoward from the Defendant, a Grade 31 Supervisory Examiner, who initially appeared to be a pleasant, older colleague.
17. However, in January, 2014, the Defendant began his campaign of continuous, severe and frightening sexual harassment of the Plaintiff. The following paragraphs constitute only some examples of Defendant's unlawful discrimination.
18. Defendant GUEVARA consistently called Plaintiff names such as "Miss beautiful" despite Plaintiff's obvious discomfort.
19. Furthermore, the Defendant admitted to Plaintiff HSUEH that he checked her cubicle every morning to see whether she was in the office. In fact, Plaintiff repeatedly observed the Defendant watching her as she sat in her cubicle, causing her trepidation.
20. The Defendant insisted that Plaintiff accept various gifts despite her objections, including but not limited to, food, painted clay Dalmatians, a Christmas tree angel, small bottles of shampoo and conditioner, a hair clip, baseball caps, pens, and, most offensive, a necklace that Defendant's wife had given to him. Plaintiff was extremely uncomfortable receiving these gifts, but Defendant would not relent until Plaintiff reluctantly accepted these "gifts."
21. In May, 2014, the Defendant approached the Plaintiff and grabbed her cellular phone from her grasp, scrolling through the Plaintiff's stored photographs without the Plaintiff's permission. Plaintiff felt that her privacy was being violated, but she was completely taken aback when the Defendant asked her to send him a picture of herself to his cellular phone.

At this point, Plaintiff was growing increasingly more uncomfortable with Defendant's sexual harassment, which was beginning to create a hostile work environment for her.

22. Later in May, 2014, Defendant GUEVARA called Plaintiff's office telephone while he was on vacation because he "wanted to hear [Plaintiff's] voice" and "missed having lunch with [Plaintiff]."
23. On July 3, 2014, Defendant's sexual harassment took an extremely severe turn for the worse. Scared to refuse his insistent invitation, Plaintiff reluctantly accompanied Defendant to lunch. While returning from lunch to the office, the Defendant purposely kept bumping into the Plaintiff, brushing up against her arm, and at times trying to grasp her arm. At this point, Plaintiff was extremely frightened. Next, while walking onto a very narrow escalator in the subject office building, the Defendant walked onto the same step as Plaintiff, breathing into her ear. Plaintiff could feel the Defendant's body heat and panicked, feeling as though she was trapped. The Defendant also grabbed the Plaintiff's arm, pressing himself against her. When the Defendant and Plaintiff entered DFS's elevator, the Defendant waited until everyone else got off and then pulled Plaintiff close to him, kissing her on her cheek near her ear.
24. On July 7, 2014, the Defendant telephoned Plaintiff four times. He telephoned her two more times on July 11, 2014.
25. Terrified by Defendant's physical sexual harassment, Plaintiff covered the windows of her cubicle on July 8, 2014 so that the Defendant would no longer be able to spy on her.
26. The following day, July 9, 2014, the Defendant left another harassing voicemail on Plaintiff's office phone, telling the Plaintiff that he missed her. Within the next 24 hours, Defendant called Plaintiff's office phone a total of six times after it became clear Plaintiff was not returning his calls.

27. At this point, Plaintiff felt overwhelmed and reported all of Defendant's unlawful conduct to her immediate supervisor, Supervising Examiner Jody Wald, on July 9, 2014. Mr. Wald then asked Plaintiff what she wanted to do, and she told him to please order Defendant GUEVARA to leave her alone.
28. On July 14, 2014, Mr. Wald told Plaintiff HSUEH that Rolf Kaumann, the head of DFS's Insurance Division, had spoken to Defendant GUEVARA and had issued a warning to stay away from the Plaintiff. Mr. Wald told Plaintiff she could file a complaint with Human Resources if she wished, but Plaintiff stated that she would hold off for the time being, hoping that Mr. Kaumann's warning was sufficient.
29. The very next day, Plaintiff returned from lunch in shock to find a missed call from the Defendant on her office telephone log. In light of Mr. Kaumann's warning to the Defendant to stay away from her, Plaintiff could not believe he had tried calling her.
30. On July 18, 2014, Plaintiff met with DFS counselor Maureen Barnes-Kellman to discuss Defendant's sexual harassment and how emotionally distressed the Plaintiff was feeling.
31. Meanwhile, Plaintiff continued her efforts to avoid the Defendant.
32. However, on August 5, 2014, Plaintiff walked passed the Defendant while heading to the restroom. The Defendant was standing outside of the restroom and asked Plaintiff if he could speak with her privately. Plaintiff shook her head and ran into the bathroom. Later, she emailed her supervisors, Mr. Wald and Principal Examiner March Allen, to advise them that Defendant was not heeding Mr. Kaumann's warning to avoid all contact with her.
33. On August 7, 2014, Plaintiff spoke to her supervisors so she could determine how to deal with the Defendant's menacing sexual harassment. Rather than responding to Plaintiff's complaints of sexual harassment with a serious investigation, Mr. Wald merely told

Plaintiff he would speak to the Defendant and remind him to leave the Plaintiff alone. Plaintiff notified her supervisors that she was going to file a formal complaint with Human Resources if Defendant approached her again.

34. After the Defendant followed the Plaintiff around during a Department picnic on August 8, 2014, Plaintiff filed a formal sexual harassment complaint with Human Resources.
35. Despite Plaintiff's formal complaint to Human Resources, the Plaintiff was completely excluded from Defendant DFS's "investigation." Furthermore, the purported investigation has dragged on for months while DFS has allowed Defendant Guevara to "retire" in September, 2014 rather than face the consequences of his persistent and blatant sexual harassment.
36. Although Plaintiff kept following up, Allison Clavery of Human Resources would simply tell her to "stay quiet," failing to take her allegations seriously. In fact, Ms. Clavery admonished Plaintiff to "stay quiet" approximately a dozen times. Ms. Clavery appeared unconcerned regarding the actual substance of the "investigation."
37. To date, DFS has not informed Plaintiff about anything regarding its investigation despite her requests to be apprised of the findings.
38. Moreover, after Defendant's "retirement," DFS has continually permitted him to enter the property. Upon information and belief, the Defendant was in the subject office building three times since his retirement. For example, on December 10, 2014, he was allowed in the vicinity of Plaintiff's cubicle on the fourth floor of Defendant DFS's office.
39. Rather than facing discipline, DFS continues to reward Defendant Guevara, allowing him to "retire" and return to the office and organizing a monetary collection for his "retirement."

40. As a result of Defendant GUEVARA's unlawful conduct, Plaintiff has been traumatized and withdrawn at work. She is no longer at ease with male colleagues beyond those in her immediate departmental group.
41. Defendants created a hostile working environment, which has unreasonably interfered with Plaintiff's work environment.
42. Plaintiff was treated differently by her a senior-level supervisor, Defendant GUEVARA, solely due to her gender (sexual harassment).
43. Plaintiff has been unlawfully discriminated against, humiliated, degraded, and belittled, and, as a result, suffers loss of rights, emotional distress, and physical injury.
44. The Defendants' actions and conduct were intentional and intended to harm Plaintiff.
45. As a result of the acts and conduct complained of herein, Plaintiff has suffered emotional pain, inconvenience, loss of enjoyment of life, and other non-pecuniary losses. Plaintiff has further experienced severe emotional and physical distress.
46. As a result of the above, Plaintiff has been damaged in an amount which exceeds the jurisdictional limits of the Court.
47. Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law. As such, Plaintiff demands punitive damages as against both Defendants, jointly and severally.

**AS A FIRST CAUSE OF ACTION
FOR DISCRIMINATION UNDER TITLE VII
(Not Against Individual Defendant)**

48. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
49. This claim is authorized and instituted pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section(s) 2000e et seq., for relief based upon the unlawful

employment practices of Defendant DFS. Plaintiff complains of Defendant's violation of Title VII's prohibition against discrimination in employment based, in whole or in part, upon an employee's gender (sexual harassment).

50. Defendant engaged in unlawful employment practices prohibited by 42 U.S.C. §2000e et seq., by discriminating against Plaintiff because of her gender (sexual harassment).

**AS A SECOND CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

51. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
52. The New York City Administrative Code §8-107(1) provides that, "It shall be an unlawful discriminatory practice: (a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment."
53. Defendants engaged in unlawful discriminatory practices in violation of New York City Administrative Code §8-107(1)(a) by creating and maintaining discriminatory working conditions, and otherwise discriminating against Plaintiff because of her gender (sexual harassment).

**AS A THIRD CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

54. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
55. The New York City Administrative Code §8-107(6) provides that it shall be an unlawful discriminatory practice: "For any person to aid, abet, incite, compel or coerce the doing of

any of the acts forbidden under this chapter, or attempt to do so.”

56. Defendant GUEVARA engaged in unlawful discriminatory practices in violation of New York City Administrative Code §8-107(6) by aiding, abetting, inciting, compelling and coercing the above discriminatory and unlawful conduct.

**AS A FOURTH CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

57. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

58. New York City Administrative Code §8-107(13) Employer liability for discriminatory conduct by employee, agent or independent contractor.

a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.

b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:

1. the employee or agent exercised managerial or supervisory responsibility; or
2. the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

3. the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

c. An employer shall be liable for an unlawful discriminatory practice committed by a person employed as an independent contractor, other than an agent of such employer, to carry out work in furtherance of the employer's business enterprise only where such discriminatory conduct was committed in the course of such employment and the employer had actual knowledge of and acquiesced in such conduct.

59. Defendant DFS violated the section cited herein.

JURY DEMAND

60. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff respectfully requests a judgment against the Defendants:

- A. Declaring that Defendants engaged in unlawful employment practices prohibited by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et. seq.*, and the New York City Human Rights Law in that Defendants sexually harassed Plaintiff and discriminated against Plaintiff on the basis of her gender;
- B. Awarding damages to Plaintiff resulting from Defendants' unlawful sexual harassment and discrimination and to otherwise make her whole for any losses suffered as a result of such unlawful employment practices;
- C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to her reputation in an amount to be proven;
- D. Awarding Plaintiff punitive damages;

- E. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of the action; and
- F. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful employment practices.

Dated: New York, New York
February , 2015

PHILLIPS & ASSOCIATES,
ATTORNEYS AT LAW, PLLC

By:

Joshua P. Frank, Esq.
Attorneys for Plaintiff
45 Broadway, Suite 620
New York, New York 10006
(212) 248-7431
jfrank@tpeglaws.com

Exhibit C

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 TIFFANY HSUEH,

4 Plaintiff,

5 Index No:

6 - against -

15 CV 03401

7 THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
8 a/k/a THE DEPARTMENT OF FINANCIAL SERVICES and
9 ABRAHAM GUEVARA, Individually,

10 Defendants.

11 120 Broadway
12 New York, New York
13 April 20, 2016
14 10:16 a.m.

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16
17
18 EXAMINATION BEFORE TRIAL OF TIFFANY HSUEH, the
19 Plaintiff, pursuant to Notice, taken at the above
20 place, date and time, before MARIA ACOCELLA, a
21 Notary Public within and for the State of New York.
22
23
24
25

1 T. Hsueh

2 Q. Did she tell you that other
3 victims could be inhibited from coming
4 forward if sexual harassment allegations are
5 not kept confidential?

6 MR. FRANK: Objection, asked and
7 answered.

8 A. I don't remember if she told me
9 that. I just know she was inhibiting me from
10 speaking about my sexual harassment.

11 Q. Did you ever record these
12 conversations with Ms. Clavery?

13 A. No, I don't believe so.

14 Q. You don't believe so, or do you
15 know?

16 A. I don't think so.

17 Q. Is it possible that you recorded
18 conversations with Ms. Clavery?

19 A. It is possible.

20 Q. Were you recording conversations
21 that you had with Ms. Clavery?

22 A. I don't remember. And like I
23 deleted and lost a bunch of stuff in my
24 files. It has been two years. I only found
25 my health insurance records yesterday.

1 T. Hsueh

2 Otherwise I would have given them to Josh
3 before, so I might have recorded something.

4 Q. And deleted it?

5 A. Yes.

6 Q. When would you have deleted it?

7 A. Either the course of 2016 or
8 2015.

9 Q. Why were you recording
10 conversations with Ms. Clavery?

11 A. Because she had not taken -- she
12 had not taken -- I do not feel she was
13 responding appropriately to my harassment
14 complaints.

15 Q. How were you taping your
16 conversations with her?

17 A. Because it would show what
18 exactly she was saying her actions and -- but
19 everything she was telling me. Like telling
20 me again to stay silent and be quiet.

21 Q. Did you record those
22 conversations for purposes of this lawsuit?

23 A. No.

24 Q. So then why did you record them?

25 A. To protect myself.

1 T. Hsueh

2 Q. From what?

3 A. Retaliation.

4 Q. Retaliation by who?

5 A. Allison herself, DFS.

6 Q. Then why did you delete them?

7 A. Because I didn't -- because like
8 I said, it was over the course of two years.
9 I have moved in the meantime, and I lost -- I
10 have gotten a new computer. I haven't kept
11 everything.

12 Q. You kept photos. You kept a
13 spreadsheet.

14 You didn't keep tape recorded
15 conversations with Ms. Clavery?

16 MR. FRANK: Objection to form.

17 A. As I said, the voice recording
18 itself is was not very clear, so I did not
19 feel it was worth keeping.

20 Q. Did you delete it because it
21 wasn't helpful for your case?

22 A. No. Because I actually would
23 have rather it been more clear. The only way
24 to do that would have been to held the tape
25 recorder right to her mouth.

1 T. Hsueh

2 Q. You were recording Ms. Clavery
3 without her knowledge, right?

4 A. I did not tell her I was
5 recording her.

6 Q. Were you setting up these
7 meetings with Ms. Clavery so that you could
8 record her?

9 A. No.

10 Q. You were setting them up and just
11 happened to record her?

12 A. I believe one of the meetings,
13 she reached out to me and asked me to meet
14 with her. So it is not that it was all one
15 sided and I was asking her for those
16 meetings.

17 Q. But some of them, you asked for?

18 A. Yes. I asked her for some
19 meetings. And she, in return, also contacted
20 me to ask for meetings.

21 Q. And how many meetings with
22 Ms. Clavery did you record?

23 A. From my recollection, there was
24 only approximately two to three meetings. So
25 I think I only recorded one meeting.

1 T. Hsueh

2 Q. And was that a meeting you had
3 initiated or she had initiated?

4 A. She had initiated.

5 Q. How do you remember that? Which
6 meeting was it?

7 A. I remember going to that meeting.

8 Q. Which meeting are we talking
9 about now?

10 A. It was the very last one she had
11 with me.

12 Q. And you said she initiated that
13 one?

14 A. Yes.

15 Q. For what purpose?

16 A. She asked me, what would you like
17 me to do.

18 Q. When was this meeting?

19 A. I believe it was sometime in
20 either December or January.

21 Q. Of 2015?

22 A. Yes, 2015 or 2016.

23 Q. So she called the meeting to ask
24 what you wanted her to do.

25 Can you explain what you mean by

1 T. Hsueh

2 that?

3 A. I asked her -- I was very upset.
4 I told her I felt I was being left in the
5 dark. That I wasn't being given any status
6 updates. I hadn't been told that Abe Guevara
7 had been placed on administrative. I hadn't
8 even been told the exact date of his
9 retirement.

10 They never -- they have not
11 notified DFS employees not to allow him back
12 in the building. They did not notify them
13 that he was a physical danger to me. And I
14 asked her about all these things.

15 Q. And what did she say?

16 A. She said what would you like me
17 to do.

18 Q. And what did you say?

19 A. I don't remember exactly, but I
20 remember staring at her in disbelief, why she
21 would ask me how to tell her to do her job.

22 Q. And again, you recorded this
23 meeting, correct?

24 A. Yes.

25 Q. And deleted that recording?

Page 211

1 T. Hsueh

2 A. As I said before, it was not very
3 clear.

4 Q. So you listened to it after?

5 A. Yes.

6 Q. To make sure you caught
7 everything?

8 A. I don't -- I didn't listen to the
9 whole thing. I listened to the first few
10 minutes, and I had not even been able to
11 catch most of her responses.

12 Q. Other than Ms. Clavery, did you
13 discuss your complaints against Mr. Guevara
14 with anyone else at DFS?

15 A. Um, I don't remember.

16 I know, you know, definitely it
17 was Jenny. I talked to Mark.

18 Q. That is Mark Allen?

19 A. Yes.

20 Q. Anyone else?

21 Well, actually, what did talk to
22 Mr. Allen about?

23 A. That Abe had been -- had been --
24 had forced a kiss on me.

25 Q. No. I am talking now about your

Exhibit D

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 TIFFANY HSUEH,

4 Plaintiff,

5 Index No:

6 - against -

15 CV 03401

7 THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
8 a/k/a THE DEPARTMENT OF FINANCIAL SERVICES and
9 ABRAHAM GUEVARA, Individually,

10 Defendants.

11 120 Broadway
12 New York, New York
13 April 20, 2016
14 10:16 a.m.

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16
17
18 EXAMINATION BEFORE TRIAL OF TIFFANY HSUEH, the
19 Plaintiff, pursuant to Notice, taken at the above
20 place, date and time, before MARIA ACOCELLA, a
21 Notary Public within and for the State of New York.
22
23
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25

1 T. Hsueh

2 Q. When did you fill out the
3 complaint form?

4 A. Well, she gave it to me, and I
5 believe I filled it out the following day. I
6 am not exactly sure.

7 Q. And during your meeting with
8 Ms. Clavery, what did you tell her was going
9 on with Mr. Guevara?

10 I am going to ask you to stop
11 doing that.

12 What did you tell her at the
13 meeting?

14 A. All the list of instances that
15 happened, I had written out.

16 Q. So you read her that list or
17 showed her the list?

18 A. I don't know exactly. But I
19 believe I showed her the list and I read from
20 it.

21 Q. What was her response?

22 A. She said she was taking it very
23 seriously. But in the meantime, she was
24 going to investigate it. But in the
25 meantime, I couldn't tell anyone. She told

1 T. Hsueh

2 me -- she instructed me not to talk to anyone
3 in the department about this, just to stay
4 quiet. Just stay quiet and, you know, let
5 her do the investigation.

6 Q. Did she explain that the
7 investigation was going to be confidential?

8 A. Confidential only to me or --

9 Q. Did she explain it was going to
10 be a confidential investigation?

11 A. Okay. Because when I hear
12 confidential, I think maybe lawyer privilege
13 confidential, and it is just me only.

14 It wasn't just me. She was going
15 around, talking to several other employees.

16 Q. Right.

17 A. Talking about this.

18 Q. Yes. People that you identified
19 in your complaint?

20 A. Yes, so...

21 Q. Did she tell you that the
22 investigation that -- when she told you not
23 to discuss the investigation, did she explain
24 that it was because it was a confidential
25 investigation?

1 T. Hsueh

2 A. She just told me to be quiet.
3 She just told me -- yeah, she just said --
4 she might have said it was confidential. She
5 just instructed me, from what I -- my
6 strongest memory is that she was instructing
7 me to be quiet. Just to stay silent, not to
8 talk to anyone, and to let her collect
9 information from others.

10 Q. And she also provided you with
11 that complaint form to fill out?

12 A. Yes.

13 Q. Where did you fill it out, at
14 home or at work?

15 A. I don't know exactly. But I
16 believe that I filled it out, you know, right
17 after I met her.

18 Q. Okay.

19 A. Or I started filling it out.

20 Q. And you said you already had that
21 spreadsheet prepared already, correct?

22 A. Yes.

23 Q. And then when did you submit the
24 completed form with the attachment to
25 Ms. Clavery?

1 T. Hsueh

2 A. I don't know exactly, but I think
3 it was the very next day.

4 Q. The day after your first meeting?

5 A. Either the day after or
6 another -- the day right after the meeting.

7 Q. So a day or two after your
8 meeting?

9 A. Yes, a day or two after.

10 Q. If you can turn to page two of
11 the complaint, the handwritten portion still.
12 Yeah, page two. Number three, the second
13 question is the discrimination continuing.
14 Do you see that?

15 A. Oh, yes. Is the discrimination
16 continuing. Yes, I have checked box next to
17 yes.

18 Q. Now if we go to the text you said
19 you started keeping -- okay. After the
20 handwritten pages we have these two pages of
21 a spreadsheet. Right?

22 A. Uh-huh.

23 Q. And you said you started keeping
24 the spreadsheet on or after July 3rd, right?

25 A. Yes. Yes, I did.

1 T. Hsueh

2 Q. And where did you type them? Was
3 that at home or at work?

4 A. I believe while the incidents
5 were occurring, so probably at work.

6 Q. So you typed that at work.
7 Did you anyone help you prepare
8 them?

9 A. No.

10 Q. Did you show them to anyone aside
11 from Ms. Clavery?

12 A. I don't believe I showed it to
13 anyone.

14 Q. Did you see them to your husband?

15 A. To my husband, yeah, I probably
16 might have shown it to him.

17 Q. Do you recall when?

18 A. I see my husband every day. It
19 could have been even the day I created the
20 spreadsheet. It could have been while it was
21 ongoing.

22 Q. You said you were preparing it at
23 work, right?

24 A. Yeah. I also e-mailed it to
25 myself, and I probably added on to more stuff

1 T. Hsueh

2 and instances that occurred even before the
3 July 3rd incident. So I could have shown it
4 to my husband.

5 Q. What did he say when you showed
6 it to him?

7 MR. FRANK: Just answer her
8 question.

9 A. What did he say?

10 Q. Yes.

11 A. He said it was creepy.

12 Q. When you showed him these pages,
13 was that the first time you had spoken to
14 your husband about Mr. Guevara?

15 A. No.

16 Q. When was the first time?

17 A. While I had known Mr. Guevara
18 since I entered the property bureau. I might
19 have mentioned him on and off since 2012.

20 Q. When was the first time you told
21 your husband that you were having a problem
22 with Mr. Guevara?

23 A. I can't be sure of the exact
24 date. We are married. We see each other
25 every day. We have been together a long

1 T. Hsueh

2 time. So I could have mentioned it anywhere
3 from 2012 onwards.

4 Q. And what was your husband's
5 response?

6 A. He said it was creepy, and that
7 Mr. Guevara should have known better.

8 Q. Now does this spreadsheet contain
9 a summary of all your encounters with
10 Mr. Guevara?

11 MR. FRANK: Objection to form.
12 You can answer.

13 A. Actually, I think I added even
14 more after 30. So it might even extend past
15 30.

16 Q. On the day that you submitted
17 this complaint to Ms. Clavery, was this a
18 complete summary of your interactions with
19 Mr. Guevara?

20 MR. FRANK: Objection to form.
21 You can answer.

22 A. Yes, I believe so.

23 Q. So did you leave anything out?

24 MR. FRANK: Same objection.

25 A. There is just so much. There is

1 T. Hsueh

2 Q. And what did he say?

3 A. He said oh, he is like, take it.
4 Take it. You know, I am not going to use it.
5 You might as well have it.

6 Q. So you accepted them, correct?

7 A. Not with any intention to use
8 them.

9 Q. But you kept them?

10 A. It seemed rude to offend him, and
11 he seemed to really want me to keep them.

12 Q. Why didn't you throw them out
13 once you accepted them?

14 A. Why didn't I throw them out?

15 Q. Yes.

16 A. I just stashed them in the bottom
17 part of my office drawer and never looked at
18 them again, actually.

19 And you are correct but, you
20 know, I don't know. Maybe I thought that I
21 could, yeah, I would take photographs of them
22 later as proof.

23 Q. So you kept them because you
24 thought you might need proof later?

25 A. Well, I didn't keep them

1 T. Hsueh

2 this girl?

3 A. I haven't put a date here, so I
4 can't be exactly to sure. But when I was
5 actually -- I think it was sometime after the
6 July 3rd incident when I actually told her
7 that I was thinking of filing -- making an
8 official complaint.

9 Q. Now if you turn to the next -- to
10 the pages after this spreadsheet, the first
11 few pages are photos of the call log on your
12 work phone; is that right?

13 A. Uh-huh.

14 Q. And does your work phone reflect
15 incoming and outgoing calls?

16 A. I think this is all calls, so it
17 should be incoming and outgoing.

18 Q. I am not saying this.

19 I am saying your work phone, in
20 general, does it reflect both types of
21 calling?

22 A. Yes.

23 Q. Now at the top of that first page
24 you say they reflect 14 calls made from
25 May 23rd to July 7th, period of three months,

1 T. Hsueh

2 right?

3 A. Uh-huh.

4 Q. New these 14 calls are not the
5 only calls you received during that
6 three-month period, are they?

7 A. No. Those are the only ones that
8 I guess are still left on my phone.

9 Q. I am asking from for Mr. Guevara.
10 During this three-month period,
11 you did not only receive or make 14 calls,
12 right, or make 14 calls?

13 MR. FRANK: Objection to form.
14 Go ahead.

15 Q. That was a convoluted question.
16 Now these first few pages, they
17 reflect calls over a three-month period,
18 right?

19 A. Yes.

20 Q. Now over that three-month period,
21 you did not only get these 14 calls, right?
22 I am not saying Mr. Guevara, period.

23 Other people called you during
24 this three-month period on your work phone?

25 A. I am actually not too sure. Any

1 T. Hsueh

2 saying? No one ever called you?

3 A. From my understanding, you are
4 asking me for the period of three months, who
5 called me?

6 Q. Yes.

7 A. I am saying other people might
8 have called me. But from just going by what
9 I am showing you.

10 Q. Did you delete any calls? Before
11 you took these pictures, did you delete any
12 calls that were not from Mr. Guevara?

13 A. It has been two years, so I am
14 not exactly clear. But I might have deleted
15 any other calls that would not show the
16 sexual harassment.

17 Q. So why would you have deleted
18 those calls?

19 A. I guess to show -- some that Abe
20 was actually calling me on those times and
21 dates.

22 Q. So you would have deleted any
23 calls that were not from Mr. Guevara?

24 A. I can't be too sure. I might not
25 have received any. I can go months without

1 T. Hsueh

2 call log, then we have pictures of an
3 escalator, then we have pictures of a
4 necklace, a hair clip and two baseball caps,
5 right?

6 A. Yes.

7 Q. You say these are gifts that
8 Mr. Guevara gave you, right?

9 A. Yes.

10 Q. Now did he give them to you all
11 at once?

12 A. No.

13 Q. It was on separate occasions?

14 A. Yes.

15 Q. Over the course of how many
16 years?

17 A. I believe over the two years that
18 I knew him.

19 Q. And then when did you take these
20 pictures?

21 A. When did I take these pictures?
22 I believe it was the same time I was
23 recording, possibly on or after July 3rd.

24 Q. And why did you take pictures at
25 that point?

1 T. Hsueh

2 A. Because I realized, you know, he
3 had crossed the line. He had tried to kiss
4 me, and he was pressing himself against me.
5 And that was -- I realized he wanted to go
6 further. He wanted to go further. He wanted
7 a further relationship, which was not
8 appropriate at all.

9 Q. And then you -- after that
10 happened, you immediately recalled that you
11 had all these gifts and took their pictures?

12 A. I believe I was asked like some
13 of my -- I mean, I believe I might have asked
14 if I had any gifts.

15 Q. By who?

16 A. Possibly Jenny. I believe I was
17 asked if I had gifts, and all I could think
18 of was -- I don't even really recall. I
19 don't really consider these -- these aren't
20 stuff that I use every day, or even to my
21 style or taste, so like I couldn't even
22 recall what they were. And then I looked
23 into my drawer, and I found them.

24 Q. So why did Jenny ask if you had
25 any gifts?

1 T. Hsueh

2 A. I can't recall the context. But
3 yeah, I was asked. I was telling her that I
4 was afraid. I was afraid and that, you know,
5 that this was definite sexual harassment.

6 And she asked -- I think she
7 might have asked me if I had been given any
8 gifts.

9 Q. And then where had you been
10 keeping these gifts?

11 A. In the bottom of my drawer.

12 Q. At work?

13 A. Yes.

14 Q. For some of them for a year or
15 two?

16 A. Possibly, yes.

17 Q. And why, again, did you not throw
18 them out?

19 A. Why did I what?

20 Q. Why didn't you throw them out, if
21 you didn't want them?

22 MR. FRANK: Objection, asked and
23 answered.

24 A. I wasn't going to use them, and I
25 had extra space in the bottom of my drawer.

1 T. Hsueh

2 on leave?

3 A. No. I had not heard that. I was
4 not actually informed of anything.

5 Q. Did you hear from anyone that he
6 had been placed on leave?

7 A. No. I was not informed of
8 anything.

9 Q. I am not asking if you were
10 informed of anything.

11 MR. FRANK: Objection, asked and
12 answered.

13 Q. Did anyone, at any point, tell
14 you that Mr. Guevara had been placed on
15 leave?

16 MS. FRANK: Objection, asked and
17 answered.

18 A. Allison had a very heavy
19 emphasizing the fact that I stay quiet. I
20 believe she gave the same instructions to
21 Mark and Jody. So I was not even -- and
22 every time I e-mailed Allison Clavery for an
23 update, she would not tell me anything. She
24 would tell me the investigation was ongoing.
25 She would not give me any information.

1 T. Hsueh

2 Q. Ms. Hsueh, I would ask for you to
3 please answer the questions that I am asking.
4 I know you have a story to tell. I am sure
5 we will get to it, but please answer my
6 questions.

7 A. I am trying to answer you. You
8 asked me if anyone informed me, and I told
9 you no one informed me of anything.

10 Q. Okay.
11 Did you hear that Mr. Guevara had
12 been escorted out of the office?

13 A. No.

14 Q. That happened in front of
15 everyone in the property bureau, didn't it?

16 A. I was not even told about it.
17 Like from my cubicle to where the front door
18 is, actually I wouldn't be able to see the
19 front door.

20 Q. It is a fair unusual occurrence
21 for someone to be escorted out of the
22 property bureau, isn't it?

23 A. I am not sure.

24 Q. Was it the talk of the office?

25 A. I wasn't even there that long.

1 T. Hsueh

2 Q. Was it the talk of the office
3 that Mr. Guevara had been escorted out of the
4 property bureau?

5 A. I can't emphasize how Allison
6 Clavery told me to be quiet, and she
7 instructed everyone around me the same order,
8 to stay silent, be quiet, not to talk to each
9 other.

10 Q. So it is your testimony that
11 people were not discussing the fact that
12 Mr. Guevara had been escorted from the
13 building?

14 A. If they were discussing it, it
15 was never to my face and never within my
16 hearing.

17 Q. Weren't people asking where he
18 had gone?

19 MR. FRANK: Objection to form.

20 A. They certainly weren't asking me
21 where he had gone.

22 Q. But you saw he was no longer at
23 work, right?

24 A. As I repeated, I was never
25 informed of anything.

1 T. Hsueh

2 e-mail correspondence marked as Exhibit G?

3 A. Yes.

4 Q. And this is an e-mail
5 correspondence again between you and Allison
6 Clavery, right?

7 A. Yes.

8 Q. In the first e-mail from you is
9 dated September 2nd, right, 2014?

10 A. Yes.

11 Q. And that is about two weeks after
12 you filed your complaint, right?

13 A. Yes.

14 Q. And you asked Ms. Clavery for the
15 results of your case, and say, I am anxious
16 for a conclusion to relieve my unease, right?

17 A. Yes.

18 Q. What were you uneasy about?

19 A. As I mentioned earlier, she had
20 told me to be quiet. She informed my
21 supervisors to be quiet, not to say anything.
22 She informed me not to say anything.

23 My supervisors were not telling
24 me anything. I was not hearing anything from
25 other employees. I was entirely in the dark

1 T. Hsueh

2 a collection was going on.

3 Q. What did she say?

4 A. She said she can't tell other
5 people what to do.

6 Q. And why were you upset about this
7 collection?

8 A. Because there had been nasty
9 gossip going around behind my back. I had
10 encouraged Abe, and I had intentionally tried
11 to seduce him and that, you know, they blamed
12 me and, you know. That Abe had been an
13 innocent old man, and no other girl had
14 complained about him before, and they had
15 known him for such a long time. I felt
16 victimized all over again.

17 Q. Other than contacting Allison,
18 did you do anything else when you found out
19 about the collection?

20 MR. FRANK: Objection to form.
21 Go ahead.

22 A. During my conversation with
23 Allison, and she again reiterated that I had
24 to stay silent, not to speak to anyone.

25 Q. Ms. Hsueh, I said other than your

1 T. Hsueh

2 meeting with Allison. I don't know why you
3 are responding to me with a question with
4 testimony about Allison's meeting.

5 A. I am trying to answer your
6 question by telling you what Allison was
7 instructing me to do.

8 Q. What did she instruct you to do?

9 A. Not talk about this
10 investigation. To be quiet, and that if I
11 stayed silent, everything would die down.

12 Q. Did you follow those
13 instructions?

14 A. I had followed the instructions
15 up until that point where she had told me
16 that she couldn't tell people what to do, and
17 that is all she wanted me to do.

18 All she wanted for this
19 investigation was for it to die down.

20 Q. So you disregarded her
21 instructions. What did you do?

22 A. As I mentioned earlier, I
23 followed her instructions up until the point
24 where I felt that she was no longer looking
25 out for my best interest. And she was

1 T. Hsueh

2 exact date.

3 You knew about a retirement
4 collection, therefore you knew he was
5 retiring, right?

6 MS. FRANK: She said yes.

7 MS. DIETZ: No, she didn't.

8 MR. FRANK: I think the record
9 will show.

10 Q. You knew about a retirement
11 collection, so you knew he was retiring; is
12 that correct? Yes or no?

13 A. Yes. But I was not told an exact
14 date. He could have been retiring a month
15 from that date.

16 Q. And what did you tell Ms. Clavery
17 that you wanted to know?

18 A. I wanted a status update on the
19 investigation.

20 Q. And what was her response?

21 A. She said -- she again said the
22 complaint was being investigated. And while
23 the investigation was ongoing, don't speak to
24 anyone about it. Don't speak about it with
25 Jenny. Don't speak about it with your

1 T. Hsueh

2 supervisors. Don't speak about it, period.
3 Everything will die down.

4 Q. She specifically said, don't
5 speak about it with Jenny?

6 A. Yes.

7 Q. Why would she say that?

8 MR. FRANK: Objection, calls for
9 speculation.

10 Go ahead.

11 MS. DIETZ: I am going to ask
12 again that you don't give speaking
13 objections. Objection to form, and that
14 is it. You know that is all you are
15 supposed to today.

16 A. She had seen Jenny escort me to
17 when I filed the complaint, and she
18 interviewed Jenny; so she knew about Jenny.

19 Q. Well, in your complaint, you said
20 she said keep quiet, right?

21 A. (Witness indicating)

22 Q. Is that a yes?

23 A. Stay silent, actually.

24 Q. So she said stay silent?

25 A. Yes.

1 T. Hsueh

2 Q. And you say in your complaint she
3 said, well, you say keep quiet, and you say
4 she said that approximately a dozen times?

5 A. Yes.

6 Q. Was it keep quiet, or is it stay
7 silent, that she said approximately a dozen
8 times?

9 A. I did not record her that day, so
10 I cannot say her exact words. It was pretty
11 much stay silent. Be quiet. Everything will
12 die down.

13 Q. And you recall she said that
14 approximately a dozen times?

15 A. Yes.

16 Q. In how many conversations?

17 A. As I said, I think -- I believe I
18 had two or three meetings with her, and it
19 was throughout the course of the two or three
20 meetings.

21 Q. She would just keep repeating
22 stay quiet, stay quiet?

23 A. Yes.

24 Q. Didn't she simply tell you the
25 investigation was being kept confidential?

1 T. Hsueh

2 A. She said -- I don't remember -- I
3 don't remember word for word everything she
4 told me.

5 And the strongest point, from my
6 memory, is what really stuck out for me was
7 the fact that she kept saying, stay quiet,
8 stay quiet, be silent, be silent. If you
9 stay silent, everything will die down.
10 People just want gossip.

11 Q. Did you have a problem with the
12 fact that the investigation was confidential?

13 A. For me, yes, I did.

14 Q. Not confidential, in general?

15 A. Because she was not informing me
16 of anything.

17 Q. You said she kept saying keep
18 quiet, stay quiet, whatever.

19 What did you want to say, and to
20 whom?

21 A. She was telling me not to talk at
22 all about my sexual harassment.

23 Q. To who?

24 A. I am assuming she meant everyone.
25 Or like that is what I can inferred.

1 T. Hsueh

2 Q. Who did you want to talk about it
3 with?

4 A. Not necessarily that I wanted to
5 talk about it. If anyone had asked me, I
6 would have probably would have responded.
7 But before I could even get to that point she
8 just said stay silent, be quiet.

9 Q. And your problem with that was in
10 case someone happened to ask you if you had
11 been sexually harassed, you wanted to be able
12 to say yes?

13 A. No. If, you know, like, for
14 example, when they collected the money,
15 anyone had asked me about it, I would have
16 liked -- I would have appreciated being able
17 to tell people what Abe had done to me. And
18 instead, I wasn't.

19 Q. So that was what you wanted to
20 do, you wanted to be able to tell people your
21 allegations against Mr. Guevara, when they
22 were collecting money for his retirement?

23 A. They are not allegations. It was
24 even found by Allison Clavery --

25 Q. Not at that time.

1 T. Hsueh

2 blame yourself.

3 Q. Why did you talk to both of them?

4 A. I felt very isolated, after
5 Allison told me I couldn't speak to anyone.
6 So my supervisor had been told instructed not
7 to say anything. She told me not to speak to
8 Jenny. And I needed -- I went to look for --
9 I was looking for advice.

10 Q. Well, you were still
11 communicating with Jenny. We have just seen
12 all these e-mails?

13 A. Yes. But she instructed me not
14 to.

15 Q. But you did anyway; is that
16 correct? You talked to her anyway?

17 A. I stopped talking until the point
18 of the money collection, and in which case I
19 resumed talking to Jenny.

20 Q. And now you said your supervisors
21 were told not to talk to you.

22 How do you know your supervisors
23 were told not to talk?

24 A. Allison said that -- Allison
25 said -- Allison told me to be quiet. And I

1 T. Hsueh

2 A. Yes.

3 MS. DIETZ: I would like to mark
4 the next exhibit.

5 (Whereupon, a four-page document
6 was received and marked as Defendant's
7 Exhibit K for identification, as of this
8 date.)

9 Q. Before we get to that, have you
10 tape recorded any conversations with anyone
11 else at DFS, other than Ms. Clavery?

12 A. No.

13 Q. Now we can look at -- do you
14 recognize Exhibit K?

15 A. It looks like my spreadsheet.

16 Q. Well, it is similar to the
17 spreadsheet that was attached to your
18 internal complaint, but it is longer, right?

19 A. Yes.

20 Q. When did you prepare this
21 document?

22 A. It is the same spreadsheet. I
23 just added onto it.

24 Q. So you started preparing it in
25 July 2014. And when was the last time you

1 T. Hsueh

2 put an entry in there?

3 A. December or January.

4 Q. Of what year?

5 A. December of 2014 or January 2015.

6 Q. Now why did you keep adding to
7 this spreadsheet?

8 A. I was told it is good practice.

9 Q. You were told by who?

10 A. Multiple people.

11 Q. Who told you it was good
12 practice?

13 A. Jenny.

14 Q. Jenny told you it was good
15 practice.

16 Did she tell you to keep adding
17 to it after you had filed your internal
18 complaint?

19 A. She did not tell me to keep
20 adding to it. Since I already started, I saw
21 no reason not to continue.

22 Q. Why did you stop adding to it in
23 December 2014 or January 2015?

24 A. Because HR clearly -- HR clearly
25 was not giving me the results of my

1 T. Hsueh

2 on to it.

3 Q. And you have said that you
4 continued adding on to it through
5 December 2014, January 2015, right?

6 A. Yes.

7 Q. That is around the time you
8 decided to file a lawsuit, right?

9 A. Yes.

10 Q. When did you hire an attorney?

11 A. I don't remember the exact date,
12 if it is December 2014 or January 2015.

13 Q. And why did you file this
14 lawsuit?

15 MR. FRANK: Objection to form.

16 A. As I said, was scared. I was
17 scared and frightened. And HR wasn't doing
18 anything to notify employees that he was not
19 allowed back into the building. He was seen
20 multiple times. I was asking Allison quite
21 a -- for quite a few updates, and she was not
22 telling me anything.

23 Finally Scott Gollop said he
24 would tell me the final results of my sexual
25 harassment case. And then it just seemed

1 T. Hsueh

2 technically arrested.

3 Q. Wasn't your lawsuit back in 2011
4 for false arrest?

5 A. That is why I had said I had been
6 handcuffed. I had taken to a jail cell and
7 held for 90 minutes, and I had thought I had
8 been arrested.

9 Q. But you still didn't disclose
10 that to Ms. Burra?

11 A. You know, if she had just
12 outright asked, and from the conflicting
13 information my lawyer had given, I was not
14 truly processed as an arrest, I might have
15 truthfully answered no, I was not arrested.

16 Q. During your sessions with
17 Ms. Burra did you tell her that Mr. Guevara
18 had left you numerous voicemail messages?

19 A. I don't remember every single
20 detail, but I mentioned that he made multiple
21 phone calls and that I did have a voicemail
22 message from him.

23 Q. Did he leave you numerous
24 voicemail messages?

25 A. He had left me that voicemail. I

1 T. Hsueh

2 gave it to my lawyer. I am sure Josh had
3 provided it to you. And Mark Allen had also
4 heard it.

5 Q. Is that the only voicemail
6 message Mr. Guevara ever left you?

7 A. I don't remember. It is the only
8 one I had saved.

9 Q. So it is possible he left you
10 others, and you only saved this one?

11 A. As I said, yeah, he mostly called
12 me, and I documented my calls.

13 Q. Did he leave you more than one
14 voicemail message?

15 A. He might have left me more than
16 one voicemail message. That is the only one
17 I saved.

18 Q. Why would you have only saved
19 that one, if he left you more?

20 A. I was in the process of -- I
21 routinely clean -- I am sure everybody
22 routinely cleans their voicemail messages.

23 Q. Then why would you have saved
24 one?

25 A. That is the one where it was

1 T. Hsueh

2 after the July 3rd incident, where he had
3 forced a kiss upon me. And I had been truly,
4 truly frightened for my physical safety, and
5 that I would have to -- to involve my
6 supervisor.

7 Q. Did you delete any voicemail
8 messages that Mr. Guevara left you?

9 A. I don't remember. Like I said, I
10 have been employed since 2010. I routinely
11 clean my voicemail messages. It is very
12 possible I could have deleted previous
13 voicemail messages from Mr. Guevara.

14 Q. During your sessions with
15 Ms. Burra did you tell her that Mr. Guevara
16 sent you numerous text messages?

17 A. He didn't have my phone number.

18 Q. So he did not send you text
19 messages?

20 A. No.

21 Q. And during these sessions, did
22 you tell Ms. Burra that none of your
23 colleagues were supporting you?

24 A. As I mention earlier, I felt very
25 isolated from my colleagues. I had been

1 T. Hsueh

2 no, because I said it is possible I might
3 have mentioned it.

4 Q. Did Mr. Guevara send a lot of
5 chain e-mails at work?

6 A. It was -- I would say like maybe
7 once a month or so.

8 Q. Once a month since 2012, when you
9 first met him?

10 A. No, not from 2012. I mean, I
11 don't have all of dates of the chain letters,
12 so I might not -- the earliest I had taken a
13 screen shot of was from 2013. So it is
14 possible that he might have given me chain
15 letters from before 2013 and I had not saved
16 it.

17 Q. Do you still have that screen
18 shot?

19 A. Yes.

20 Q. Do you recall what the chain mail
21 said?

22 A. I gave them all to Josh. I think
23 he gave copies of it to you.

24 So they were just -- I think one
25 of them says which brain food is the best for

1 T. Hsueh

2 you. One of them may have told his wife to
3 buy a carton of milk, and if there are
4 avocados, get six, and the husband comes home
5 with six cartons of milk.

6 Q. And are these the documents that
7 you produced today for your attorney?

8 A. Yes.

9 Q. Since you discussed them, we are
10 going to mark them. We mark the entire
11 packet.

12 MR. RIZZO: Let's mark this as
13 Exhibit Defendant's M.

14 (Whereupon, a multipage document
15 was received and marked as Defendant's
16 Exhibit M for identification, as of this
17 date.)

18 Q. So, Ms. Hsueh, we have just
19 marked as Defendant's Exhibit M, 13 pages of
20 what appear to be screen shots from a
21 computer.

22 A. Uh-huh.

23 Q. That were produced this morning
24 by your counsel.

25 A. Uh-huh.

1 T. Hsueh

2 Q. I am going to ask you to take a
3 look at this and ask if you recognize that
4 document, or those 13 pages?

5 A. Yes.

6 Q. Do you recognize them?

7 A. Yes, I recognize them.

8 Q. And are these screen shots what
9 you referred to as the chain letters that Abe
10 would send around?

11 A. Yes.

12 Q. Do you recall if any one of these
13 13 pages is the particular screen shot of the
14 chain mail that you discussed with your
15 husband? You can look at them if you would
16 like.

17 A. I believe it was this one.

18 Q. Which one? The very first one
19 that has the exhibit mark on it?

20 A. Yes.

21 Q. And why do you recall it was this
22 one?

23 A. Because I remember thinking it
24 was particular funny. It was particularly
25 funny that, you know, it was a husband being

1 T. Hsueh

2 the incident on July 3rd, I was advised to
3 document my -- my experiences and any
4 instances with Abe. And then I started
5 searching my e-mails, and I took a few -- I
6 believe I took those screen shots at the same
7 time.

8 Q. So other than being told to
9 document for purposes of the incidents that
10 occurred, as you allege them, with
11 Mr. Guevara, was there any other reasons for
12 saving these screen shots?

13 A. No. You know, just as proof.

14 Q. Proof of?

15 A. You know, I had gone to my
16 supervisors, Mark Wald [sic], if I ever
17 needed -- if I ever needed more
18 documentation, I would have produced those.

19 Q. And what do you think this is
20 proof of?

21 A. I supposed e-mail, communications
22 between me and Abe Guevara.

23 Q. Okay. Anything else?

24 A. No, nothing else.

25 Oh, and I would like to make it